ARC 8894B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, Senate File 2388, section 5(4), the Department of Human Services amends Chapter 36, "Facility Assessments," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments implement a health care access assessment for hospitals other than state-owned hospitals and critical access hospitals and make corresponding adjustments to payment rates for those participating hospitals. Legislation in 2010 Iowa Acts, Senate File 2388, directed the Department to implement a hospital assessment. After reviewing several models of a hospital assessment and revising parameters in consultation with hospital industry representatives, the Department has chosen the model described in these amendments. Implementation of the amendments is conditional upon federal approval by the Centers for Medicare and Medicaid Services.

The health care access assessment rate for a participating hospital will be calculated as 1.26 percent of net patient revenue as specified in the hospital's Medicare cost report for fiscal year 2008. The hospital shall pay the assessment to the Department on a quarterly basis, no later than 30 days following the end of each calendar quarter. The reimbursement methodology for participating hospitals is modified to provide a health care access assessment inflation factor that is applied to the inpatient diagnosis-related group (DRG) rates and outpatient ambulatory payment classification (APC) base rates.

These amendments also include technical changes to update the legal references in Chapter 36, Division II.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments June 9, 2010.

The Department finds that notice and public participation are impracticable in that the authorizing legislation cites a beginning date for the hospital health care access assessment of July 1, 2010, which provides insufficient time for notice and public participation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds that these amendments confer a benefit by allowing the Iowa Medicaid program to draw down additional federal funds for services to members and payments to providers. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 8896B** to allow for public comment.

These amendments shall become effective on July 1, 2010.

These amendments are intended to implement Iowa Code section 249A.4, 2009 Iowa Code Supplement chapter 249L, and 2010 Iowa Acts, Senate File 2388.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 36**, Division II, Preamble, as follows:

These rules describe the nursing facility quality assurance assessment authorized by ~~2009 Iowa Acts, Senate File 476, enacted by the Eighty-third General Assembly~~ 2009 Iowa Code Supplement chapter 249L. The rules explain how the assessment is determined and paid.

ITEM 2. Amend rules 441—36.6(83GA,SF476) and 441—36.7(83GA,SF476), parenthetical implementation, as follows:

441—36.6(~~83GA,SF476~~ 249L) Assessment.

441—36.7(~~83GA,SF476~~ 249L) Determination and payment of assessment.

ITEM 3. Reserve rules **441—36.8** and **441—36.9**.

ITEM 4. Amend **441—Chapter 36**, Division II, implementation sentence, as follows:

These rules are intended to implement ~~2009 Iowa Acts, Senate File 476~~ 2009 Iowa Code Supplement chapter 249L.

ITEM 5. Adopt **new 441—Chapter 36**, Division III, title and preamble, as follows:

DIVISION III
HEALTH CARE ACCESS ASSESSMENT FOR HOSPITALS

These rules describe the hospital health care access assessment authorized by 2010 Iowa Acts, Senate File 2388, enacted by the Eighty-third General Assembly. The rules explain how the assessment is determined and paid.

ITEM 6. Adopt the following **new** rules 441—36.10(83GA,SF2388) to 441—36.12(83GA,SF2388):

441—36.10(83GA,SF2388) Application of assessment.

36.10(1) *Participating hospitals.* For the purpose of the health care access assessment program, a "participating hospital" is defined as a non-state-owned hospital licensed under Iowa Code chapter 135B that is paid on a prospective payment system basis by Medicare and the medical assistance programs for inpatient and outpatient services.

36.10(2) *Assessment.* Participating hospitals are required to pay a quarterly health care access assessment equal to 1.26 percent of net patient revenue as specified in the hospital's fiscal year 2008 Medicare cost report. "Net patient revenue" means all revenue reported for acute patient care and services, but does not include:

a. Contractual adjustments,
b. Charity care,
c. Bad debt,
d. Medicare revenue, or
e. Other revenue derived from sources other than hospital operations including but not limited to:
(1) Nonoperating revenue,
(2) Other operating revenue,
(3) Skilled nursing facility revenue,
(4) Physician revenue, and
(5) Long-term care revenue.

441—36.11(83GA,SF2388) Determination and payment of assessment. The assessment shall be determined and paid as follows:

36.11(1) The department shall calculate the annual amount of the health care access assessment as 1.26 percent of net patient revenue as specified in the participating hospital's fiscal year 2008 Medicare cost report. The annual amount shall be divided by four to calculate the quarterly amount.

36.11(2) Each participating hospital shall pay the health care access assessment to the department on a quarterly basis. The hospital shall submit the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

36.11(3) A participating hospital shall retain and preserve the Medicare cost report and financial statements used to prepare the cost report for a period of three years.

36.11(4) If the department determines that a participating hospital has underpaid or overpaid the health care access assessment, the department shall notify the hospital of the amount of the unpaid health care access assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

36.11(5) A participating hospital that fails to pay the health care access assessment within the time frame specified in subrule 36.11(2) shall pay a penalty in the amount of 1.5 percent of the health care access assessment amount owed for each month or portion of a month that the payment is overdue.

a. If the department determines that good cause is shown for failure to comply with payment of the health care access assessment, the department shall waive the penalty or a portion of the penalty.

b. Requests for a good cause waiver must be submitted to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315, within 30 days of notice to the facility that the penalty is due.

36.11(6) The department shall deduct the quarterly amount due from Medicaid payments to the participating hospital if the department has not received the health care access assessment by the last day of the month in which the payment is due. The department shall also withhold an amount equal to the penalty owed from any payment due.

441—36.12(83GA,SF2388) Termination of health care access assessment. If the federal government fully funds Iowa's medical assistance program, if federal law changes to negatively impact the assessment program as determined by the department, or if a federal audit determines the assessment program is invalid, the assessment shall terminate on the date the federal statutory, regulatory, or interpretive change takes effect.

These rules are intended to implement 2010 Iowa Acts, Senate File 2388.

ITEM 7. Adopt the following **new** paragraph **79.1(5)"s"**:

s. Health care access assessment inflation factor. Effective with the implementation of the health care access assessment paid pursuant to 441—Chapter 36, Division III, a health care access assessment inflation factor shall be applied to the Medicaid DRG blended base amount as otherwise calculated pursuant to this subrule for all "participating hospitals" as defined in 441—subrule 36.10(1).

(1) Calculation of inflation factor. The health care access assessment inflation factor for participating hospitals shall be calculated by dividing the amount allowed under the Medicare inpatient upper payment limit for the fiscal year beginning July 1, 2010, by the sum of the projected expenditures for participating hospitals for the fiscal year beginning July 1, 2010, as determined by the fiscal management division of the department, and the amount allowed under the Medicare inpatient upper payment limit.

(2) Implementation date. The health care access assessment inflation factor shall not be applied until federal financial participation to match money collected from the health care access assessment pursuant to 441—Chapter 36, Division III, has been approved by the federal Centers for Medicare and Medicaid Services.

(3) End date. Application of the health care access assessment inflation factor shall terminate if the health care access assessment is terminated pursuant to rule 441—36.12(83GA,SF2388). If federal match money is unavailable for a retroactive period or the authority to collect the assessment is rescinded for a retroactive period, the department shall:

1. Recalculate Medicaid rates in effect during that period without the application of the health care access assessment inflation factor;
2. Recompute Medicaid payments due based on the recalculated Medicaid rates;
3. Recoup any previous overpayments; and
4. Determine for each hospital the amount of health care access assessment collected during that period and refund that amount to the facility.

ITEM 8. Adopt the following **new** paragraph **79.1(16)"m"**:

m. Health care access assessment inflation factor. Effective with the implementation of the health care access assessment paid pursuant to 441—Chapter 36, Division III, a health care access assessment

inflation factor shall be applied to the Medicaid blended base APC rate as otherwise calculated pursuant to this subrule for all "participating hospitals" as defined in 441—subrule 36.10(1).

(1) Calculation of inflation factor. The health care access assessment inflation factor for participating hospitals shall be calculated by dividing the amount allowed under the Medicare outpatient upper payment limit for the fiscal year beginning July 1, 2010, by the sum of the projected expenditures for participating hospitals for the fiscal year beginning July 1, 2010, as determined by the fiscal management division of the department, and the amount allowed under the Medicare outpatient upper payment limit.

(2) Implementation date. The health care access assessment inflation factor shall not be implemented until federal financial participation to match money collected from the health care access assessment pursuant to 441—Chapter 36, Division III, has been approved by the federal Centers for Medicare and Medicaid Services.

(3) End date. Application of the health care access assessment inflation factor shall terminate if the health care access assessment is terminated pursuant to rule 441—36.12(83GA,SF2388). If federal match money is unavailable for a retroactive period or the authority to collect the assessment is rescinded for a retroactive period, the department shall:

1. Recalculate Medicaid rates in effect during that period without the application of the health care access assessment inflation factor;
2. Recompute Medicaid payments due based on the recalculated Medicaid rates;
3. Recoup any previous overpayments; and
4. Determine for each hospital the amount of health care access assessment collected during that period and refund that amount to the facility.

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